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Judge S. B. Adams, of Savannah, Defends Ex- Governor Slaton

Savannah, Ga., September 2, 1915.—Editor Constitution: I must enter my earnest protest against the wave of vilification that has swept over Georgia, and still survives, against Governor John M. Slaton. I understand perfectly that what I say will be unpopular, but I think that somebody ought to say some things that I propose to say.

I have never had the slightest Professional, Pecuniary, or Selfish Interest in Frank or his Case. I appeared before the Prison Commission, urging its Recommendation of a Commutation of his Sentence. I also wrote a Letter to Governor Slaton on this Subject. I was in no sense employed. Nobody has ever suggested employment to me. No Client has ever requested me to do anything for Frank. I am aware that every man who has taken the Position that Frank's Sentence ought to be commuted will have his motive impugned. Men incapable of doing anything from unselfish motives cannot comprehend how anyone can act except under the influence of some selfish or sordid inducement. Judging other people by themselves, they naturally have a poor Opinion of these others.

There has been, and is, an immense amount of misinformation and misapprehension as to the Case and the course of Governor Slaton. There are certain Facts which it seems

to me are indisputable, and to which every fair-minded man ought to give attention and weight.

Had Legal Right to Commute.

Governor Slaton had the Power and the Discretion to commute the Sentence. The Constitution of the State provides (section 6481 of the present Code) as follows: "He" (referring to the Governor) "shall have Power to grant Reprieves and Pardons, to commute Penalties, remove disabilities imposed by Law, and to remit any part of a Sentence for Offense against the State, after Conviction, except in Cases of Treason and Impeachment, subject to such regulations as may be provided by Law relative to the manner of applying for Pardons." This Power is broad and comprehensive. It cannot be taken away from the Governor, except by a Constitutional Amendment. The Prison Commission may investigate Applications for Executive Clemency, but they can only make "Recommendations to the Governor regarding the granting of the same." The Governor, and the Governor alone, can grant the Clemency.

The existence of the Power necessarily implies that the Constitution contemplates that it be sometimes exercised; otherwise, the Provision for Executive Clemency would be meaningless.

The Commutation of the Frank Sentence was, therefore, strictly Lawful and regular; was no more an assault, or attack, upon the Courts, or the regular and orderly Administration of Law, than would be the grant of a new trial by a Judge. Governor Slaton, in commuting, was completely the Mouthpiece of the Law and as completely the Representative of the Law as was Judge Hill when he sentenced Frank.

There is nothing unusual or Extraordinary in granting a Pardon or a Commutation. Governor Slaton's Predecessors, including Governor Brown, have all done the same thing, and there was no excitement, and no commotion over the Exercise of the Prerogative.

The Commutation of the Sentence to a Life Imprisonment was in no sense a setting aside of Frank's Conviction. Imprisonment for Life is one of the two Punishments provided by Law for the Crime of murder. One is as much a Lawful Punishment as the other. Imprisonment for Life involves a verdict of guilty. The trial Jury did not attach to the verdict a Recommendation to Life Imprisonment, and this part only was affected by Governor Slaton's action.

Discretion of Trial Judge.

As there was no Eyewitness to the tragedy involved, the Trial Judge had the Discretion to make the Punishment Life Imprisonment. Under his view of the Case, he ought to have done this assuming that he understood that he had the Power. Whatever his understanding, the subsequent course, his Letter, his remarks to Members of his family and to other people show that he thought that he had made a mistake in sentencing Frank to be hanged. His Position, by Letter and otherwise, meant that he realized that he had made a mistake, and he, in effect, called upon the Governor to rectify that mistake by a Commutation of the Sentence.

No tribunal has ever said, by its Judgment, or otherwise, that it was satisfied beyond a reasonable doubt of Frank's guilt, save only the Jury which tried him. I do not think that it can fairly be said that anything like a conclusive, or strong, presumption in favor of the finding of this Jury ought to be made under the Facts and Circumstances. The exact language of the majority of the

Judges of the Supreme Court of Georgia, to be found at the conclusion of their Opinion, on page 284 of 141 Ga., is as follows: "We have given careful consideration to the Evidence, and we believe that the same is sufficient to uphold the verdict; and as no substantial Error was committed in the trial of the Case, the Discretion of the Court in refusing a new trial will not be disturbed." The Supreme Court is a Court for the Correction of Errors. The Discretion referred to was that of the Trial Judge. The Court could have made the remark that it did make if every Member of the Court had been satisfied that, if he had been on the Jury, he would have rendered a verdict of not guilty. If the Court thought that the Conviction was based solely on Conley's Evidence, and that the weight of the Evidence was in favor of the Defendant, the Court could have made the observation that it did make. The Trial Judge had grave doubt as to the correctness of the verdict, and ought, in view of his Opinion, to have given Frank another trial. The United States Courts, that is to say, the District Court for the Northern District of Georgia and the Supreme Court of the United States, did not deal at all with the question of the sufficiency of the proof to justify the verdict. Frank lost his Case in these Courts on questions of practice and procedure, and there is no expression or intimation from any United States Judge on the question as to whether he was guilty or innocent, under the Facts.

Decided Conscientiously.

I do not, however, propose to go into the question of Frank's guilt or innocence. It is really not germane to the purpose of this Communication. I think any Lawyer who, with open mind, will read what Governor Slaton has said, will at least conclude that he really and conscientiously had grave doubts of Frank's guilt, and that, therefore, he decided conscientiously.

Governor Slaton was not disqualified to pass upon the Application for Clemency. If he had been interested in the Frank Case, there would have been no Provision of Law for anyone else passing upon the Application. The Laws provide for the appointment of a Judge in the place of a disqualified Judge. There is no such Provision as to a Governor. If he had not acted, the Sentence would have stood. Indeed, if newly-discovered Evidence of the most conclusive character had been discovered, demonstrating Frank's absolute innocence, no Power could have saved him, save Governor Slaton. The Petition for Clemency, in the recent New York case of Lieutenant Becker, was addressed to the Governor, who as District Attorney prosecuted him, and he nevertheless passed upon the Application.

He had never had, as I learn the Facts, which seem to be undisputed and indisputable, the slightest Pecuniary or Professional Interest in Frank, or his Case. A written Statement prepared by those in a position to know the Facts shows that in April, 1913, the Firm of Rosser & Brandon, composed of Messrs. L. Z. Rosser and Morris Brandon, was employed to represent Frank. At that time, Governor Slaton was a Member of the Firm of Slaton & Phillips. In July of the same year, there was a consolidation, in the name of the two Firms, the new Firm being known as Rosser, Brandon, Slaton & Phillips. As a part of the consolidation, there were two things well understood and distinctly agreed to. One was that neither of the two consolidating Firms was to have any Interest in the Business then on hand of the other Firm, including the Frank Case. It was particularly agreed that Governor Slaton himself was not to be interested in any Future Fees of the consolidated Firm, and this because he had been elected Governor of Georgia. His connection with the consolidated Firm and its Business was to be in name only. I gather these Facts from written Statements from those in a Position to know, and who only

could know. I assume that they are true. I do not doubt their correctness.

Should Have Objected Sooner.

The Solicitor General of the Atlanta Circuit, Governor Brown and others appeared at the Hearing before Governor Slaton for the purpose of urging that no Clemency be extended to Frank. If it were thought that Governor Slaton was, for any reason, disqualified, that was the time, in Law and in good Faith, to make the Objection. If a Case is submitted to a brother of one of the Litigants, without Objection, the Contestants taking the chances of a favorable Decision, they cannot, after the Decision, make the Objection of Disqualification. They are estopped in Law, and in Ethics. As I read the Public Prints, and as I understand the Facts, no Objection of this kind was made or suggested. It is not right, therefore, for Governor Brown, or anyone else who appeared in the trial, to make this Objection now, or to ring the changes on the suggestion that Governor Slaton and Frank's Attorneys were Partners.

I know that he might have respited Frank, and passed the Case up to Governor Harris. Had he done this, the very men who now denounce him for passing upon the Case would, in this event, have denounced him as a coward. The Case occurred during his incumbency of the Office of Governor. The Application was made to him, and he thought that it was his duty to pass upon it. His passing upon it evinced a High Order of courage. If he had been less a man, he would have passed the Case up to his Successor, or he would have permitted Frank to be hanged. A number of people know, as does the Writer of this Communication, that Governor Slaton realized fully that the Commutation of the Sentence would be unpopular, and that it would be better for him, personally and politically, either to respite Frank and let Governor

Harris pass upon the Case, or decline any Relief. We are obliged to believe, therefore, that he did his duty conscientiously as he saw his duty, unless we believe that he was bribed, or was in some way corruptly influenced. No honest and intelligent man who knows Governor Slaton will believe this for a moment, or will even entertain the suspicion that his conduct was corrupt. I know such Charges are whispered around, and hints and innuendos by men of prominence, who ought to be above this reckless Injustice, have given Circulation and color to these slanderous Reports. But if a man were to Charge in the Public Prints Bribery or other Corruption, and he were prosecuted Criminally for Libel, as he ought to be, he would not be able to furnish a Scintilla of Evidence to justify or Excuse the Charge. I, of course, do not know this, of my own knowledge, but I do know Governor Slaton, and I know that there is nothing in his Record, or his Life, that could give even the slightest Excuse, or Extenuation, for such Charges. He has always enjoyed the highest reputation for Personal and Professional Probity. He would be the veriest fool in the world, without Reference to motives or conscience, to listen to any improper overture. He would not have even the poor Excuse (which is, of course, no Excuse at all), of financial necessity or stress. If any man is willing to make a Charge of this kind against Governor Slaton, he ought to prosecute him criminally. The penal code is full and complete, and gives ample legal basis for the Prosecution, if any ground exists in fact. The truth is, no intelligent man really believes the Charge.

Those Who Urged Commutation.

If Governor Slaton is to be visited with opprobrium for what he did, then every man who urged, or requested, that he commute the Sentence ought to at least share in this opprobrium. Under the Penal Law, a man who Counsels a Crime is an accessory before the Fact, and is equally guilty with the Principal

and equally punishable. I have taken the trouble to learn the names of a large number of those Georgians who urged Clemency before the Prison Commission or the Governor. The immense Record on file at the Capitol indicates that more than ten thousand Georgians in all asked that the Sentence be commuted. All classes were represented, and largely represented Professional men, Business men, Working men, a very large number of Officials and a very large number of prominent men all over the State. Among the prominent individuals are ex-Justices of the Supreme Court Andrew J. Cobb, of Athens, and Spencer R. Atkinson, of Atlanta; Judges Pottle and Powell, formerly of the Court of Appeals; Major Cumming, Major Black, Boykin Wright and W.K. Miller, of Augusta; a majority of the Savannah Bar, and a large proportion of the Atlanta Bar, including such men as Colonel Brewster and Mr. Heyman, Law Partners of the Solicitor General; A.C. King, Robert C. Alston, J.J. Spalding, Hollins Randolph, Z.D. Harrison, Hooper Alexander and a large number of others. Judge Pardee, of the United States Court of Appeals, is also among the number. A large proportion of the Macon Bar recommended the Commutation, including such men as Judges A.L. Miller and William H. Felton and Joe Hill Hall, also Judge Joel Branham of Rome. Almost every Community in the State was represented. A very large number of the Clergy of the State, including Bishops Candler, Nelson and Reese, and Dr. John D. Mell are represented. Several hundred Bank Presidents and Officials united in the Petitions. A very large number of working men signed Petitions. I know that ten thousand from only a small percent of the Population of Georgia, and believe that it is safe to say that a large majority of the people wished Frank hanged. I also know that it will be suggested that "Jew Money" secured the Letters and Petitions in Frank's favor; but this is childish. Certainly, to a large number of these men, their Record and standing ought to Guarantee (and will Guarantee to every fair-minded man) that

they were honest and conscientious, and that their Letters represented their real sentiments. I insist, however, that if a Crime has been committed by Governor Slaton every man who recommended the Commutation is a *Particeps Criminis* and that it is not fair to saddle the odium on Governor Slaton alone. If the Marietta Mob or any other Mob, proposes to deal with Governor Slaton personally, they ought also to give their attention to those of us who asked for the Commutation.

Senator Hoke Smith's Statement.

A recent Edition of *The New York Sun*, a Paper noted for its accuracy and its High Standards, has an interview with Senator Hoke Smith, in which the Senator is credited with these words: "I tell you that, if I had been in Slaton's place, and had had a doubt of Frank's guilt, I would have done as Slaton did if they lynched me for it." These are manly words, particularly as they come from a Speaker who is neither a Personal nor a Political friend of Governor Slaton's. I notice that Governor Brown, in a Communication published in *The Macon Telegraph*, protests that he is both a Personal and Political friend. I think it clear that Governor Slaton's Opponent has been infinitely more fair and manly, than has this professed friend.

Governor Slaton had a very serious doubt of Frank's guilt, as have a large number of men who have carefully examined the Evidence as reported in the printed Record. Many of these men, of First-Class ability, have come to the conclusion that Frank was innocent. Governor Slaton has given good Reasons for these doubts, and in view of his Convictions, his course was right, and honorable and manly. With such Convictions, his course was right and honorable and manly. With such Convictions, his course would have been despicable, if he had permitted Frank to be hanged.

Frank has been hanged by a lawless Mob, taken from a Prison of the State, when the men in charge must have known that the lynching was brewing. He was taken without resistance from the men in charge, and no one of the State's Representatives was hurt, or took the slightest risk of being hurt. A foul blot has been put upon the State which it will take many years to remove. Not only has the State been discredited and disgraced, but great Business and material harm has come to the State, and will continue to come. Instances of a pronounced sort might be mentioned to illustrate this harm. Those who wished Frank lynched and contributed by their talk and their Newspaper Articles to his end, ought to be satisfied with his blood, and ought now, with reason restored, stand for Law and Order and decency. It is no longer a question in Georgia of Frank's guilt or innocence, or of the wisdom or unwisdom of the Decision of the Governor. It is a question between Law and Lawlessness, between Civilization and Anarchy. Any man who now, by reckless or careless Speech, increases the feeling against Governor Slaton, or encourages his vilification, or the threats against him, forfeits the name of a good Citizen and feeds the fires of Lawlessness.

There is no special reason why I should come to the Defense of Governor Slaton. I am under no obligation to him. There is no special intimacy between us. I do not live in the same City. But his detractors and vilifiers have had their way long enough. It is high time for his Defenders to say something in his behalf, particularly those who urged that he made the Decision that he did make. I cannot myself, consistently with my sense of duty and right, remain silent longer. Hence this Communication.

SAMUEL B. ADAMS.
